

129. SALES TAX

129.01 Definitions. Subdivision 1. The following words, terms, and phrases when used in this ordinance shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

Subd. 2. "City" means the City of Rochester.

Subd. 3. "Person" includes any individual, partner, officer, director, firm, partnership, joint venture, limited liability company, association, cooperative, social club, fraternal organization, municipal or private corporation whether organized for profit or not, estate, trusts, business trusts, receiver, trustee, syndicate, the United States, the state of Minnesota, any political subdivision of Minnesota, or any other group or combination acting as a unit, and the plural as well as the singular number. As used in the preceding sentence, the term "person" includes, but is not limited to, directors and officers of corporations, governors and managers of a limited liability company, or members of partnerships who, either individually or jointly with others, have the control, supervision or responsibility of filing returns and making payment of the amount of tax imposed by this ordinance. "Person" shall also include any agent or consignee of any individual or organization enumerated in this subdivision.

Subd. 4. A "sale" and a "purchase" includes, but is not limited to, each of the following transactions:

(a) Any transfer of title or possession, or both, of tangible personal property, whether absolutely or conditionally, and the leasing of or the granting of a license to use or consume tangible personal property other than manufactured homes used for residential purposes for a continuous period of 30 days or more, for a consideration in money or by exchange or barter;

(b) The production, fabrication, printing, or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production, fabrication, printing, or processing;

(c) The furnishing, preparing, or serving for a consideration of food, meals, or drinks. "Sale" or "purchase" does not include:

(1) meals or drinks served to patients, inmates, or persons residing at hospitals, sanitariums, nursing homes, senior citizens homes, and correctional, detention, and detoxification facilities;

(2) meals or drinks purchased for and served exclusively to individuals who are 60 years of age or over and their spouses or to the handicapped and their spouses by governmental agencies, nonprofit organizations, agencies, or churches or pursuant to any program funded in whole or part through 42 USCA sections 3001 through 3045, wherever delivered, prepared or served; or

(3) meals and lunches served at public and private schools, universities, or colleges. Notwithstanding section 129.25, subdivision 1(a), taxable food or meals include, but are not limited to, the following:

(i) food or drinks sold by the retailer for immediate consumption on the retailer's premises. Food and drinks sold within a building or grounds which require an admission charge for entrance are presumed to be sold for consumption on the premises;

(ii) food or drinks prepared by the retailer for immediate consumption either on or off the retailer's premises. For purposes of this subdivision, "food or drinks prepared for immediate consumption" includes any food product upon which an act of preparation including, but not limited to, cooking, mixing, sandwich making, blending, heating, or pouring has been performed by the retailer so the food product may be immediately consumed by the purchaser;

(iii) ice cream, ice milk, frozen yogurt products, or frozen novelties sold in single or individual servings including cones, sundaes, and snow cones. For purposes of this subdivision, "single or individual servings" does not include products when sold in bulk containers or bulk packaging;

(iv) soft drinks and other beverages including all carbonated and noncarbonated beverages or drinks sold in liquid form except beverages or drinks which contain milk or

milk products, beverages or drinks containing 15 or more percent fruit juice, and noncarbonated and noneffervescent bottled water sold in individual containers of one-half gallon or more in size;

(v) gum, candy, and candy products, except when sold for fundraising purposes by a nonprofit organization that provides educational and social activities primarily for young people 18 years of age and under;

(vi) ice;

(vii) all food sold from vending machines;

(viii) all food for immediate consumption sold from concession stands and vehicles;

(ix) party trays;

(x) all meals and single servings of packaged snack food sold in restaurants and bars; and

(xi) bakery products:

(A) prepared by the retailer for consumption on the retailer's premises;

(B) sold at a place that charges admission;

(C) sold from vending machines; or

(D) sold in single or individual servings from concession stands, vehicles, bars, and restaurants. For purposes of this subdivision, "single or individual servings" does not include products when sold in bulk containers or bulk packaging.

For purposes of this subdivision, "premises" means the total space and facilities, including buildings, grounds, and parking lots that are made available or that are available for use by the retailer or customer for the purpose of sale or consumption of prepared food and drinks. The premises of a caterer is the place where the catered food or drinks are served;

(d) The granting of the privilege of admission to places of amusement, recreational areas, or athletic events, except a world championship football game sponsored by the national football league, and the privilege of having access to and the use of amusement devices, tanning facilities, reducing salons, steam baths, turkish baths, health clubs, and spas or athletic facilities;

(e) The furnishing for a consideration of lodging and related services by a hotel, rooming house, tourist court, motel or trailer camp and of the granting of any similar license to use real property other than the renting or leasing thereof for a continuous period of 30 days or more;

(f) The furnishing for a consideration of electricity, gas, water, or steam for use or

consumption within this state, or local exchange telephone service, intrastate toll service, and interstate toll service, if that service originates from and is charged to a telephone located in this state. Telephone service does not include services purchased with prepaid telephone calling cards. Telephone service includes paging services and private communication service, as defined in United States Code, title 26, section 4252(d), as amended through December 31, 1991, except for private communication service purchased by an agent acting on behalf of the state lottery. The furnishing for a consideration of access to telephone services by a hotel to its guests is a sale under this clause. Sales by municipal corporations in a proprietary capacity are included in the provisions of this clause. The furnishing of water and sewer services for residential use shall not be considered a sale. The sale of natural gas to be used as a fuel in vehicles propelled by natural gas shall not be considered a sale for the purposes of this section;

(g) The furnishing for a consideration of cable television services, including charges for basic service, charges for premium service, and any other charges for any other pay-per-view, monthly, or similar television services;

(h) The furnishing for a consideration of parking services, whether on a contractual, hourly, or other periodic basis, except for parking at a meter;

(i) The furnishing for a consideration of services listed in this paragraph:

(i) laundry and dry cleaning services including cleaning, pressing, repairing, altering, and storing clothes, linen services and supply, cleaning and blocking hats, and carpet, drapery, upholstery, and industrial cleaning. Laundry and dry cleaning services do not include services provided by coin operated facilities operated by the customer;

(ii) motor vehicle washing, waxing, and cleaning services, including services provided by coin-operated facilities operated by the customer, and rustproofing, undercoating, and towing of motor vehicles;

(iii) building and residential cleaning, maintenance, and disinfecting and exterminating services;

(iv) detective services, security services, burglar, fire alarm, and armored car services; but not including services performed within the jurisdiction they serve by off-duty licensed peace officers as defined in section 626.84, subdivision 1, or services provided by a nonprofit organization for monitoring and electronic surveillance of persons placed on in-home detention pursuant to court order or under the direction of

the Minnesota department of corrections;

(v) pet grooming services;

(vi) lawn care, fertilizing, mowing, spraying and sprigging services; garden planting and maintenance; tree, bush, and shrub pruning, bracing, spraying, and surgery; indoor plant care; tree, bush, shrub and stump removal; and tree trimming for public utility lines. Services performed under a construction contract for the installation of shrubbery, plants, sod, trees, bushes, and similar items are not taxable;

(vii) massages, except when provided by a licensed health care facility or professional or upon written referral from a licensed health care facility or professional for treatment of illness, injury, or disease; and

(viii) the furnishing for consideration of lodging, board and care services for animals in kennels and other similar arrangements, but excluding veterinary and horse boarding services.

The services listed in this paragraph are taxable under section 129.02 if the service is performed wholly within the City of Rochester or if the service is performed partly within and partly without the City of Rochester and more of the service is performed within the City of Rochester, based on the cost of performance. In applying the provisions of this chapter, the terms "tangible personal property" and "sales at retail" include taxable services and the provision of taxable services, unless specifically provided otherwise. Services performed by an employee for an employer are not taxable under this paragraph. Services performed by a partnership or association for another partnership or association are not taxable under this paragraph if one of the entities owns or controls more than 80 percent of the voting power of the equity interest in the other entity. Services performed between members of an affiliated group of corporations are not taxable. For purposes of this section, "affiliated group of corporations" includes those entities that would be classified as a member of an affiliated group under United States Code, title 26, section 1504, as amended through December 31, 1987, and who are eligible to file a consolidated tax return for federal income tax purposes;

(j) A "sale" and a "purchase" includes the transfer of computer software, meaning information and directions that dictate the function performed by data processing equipment. A "sale" and a "purchase" does not include the design, development, writing, translation, fabrication, lease, or transfer for a consideration of title or possession of a custom computer program; and

(k) The granting of membership in a club, association, or other organization if:

(1) the club, association, or other organization makes available for the use of its

members sports and athletic facilities (without regard to whether a separate charge is assessed for use of the facilities); and

(2) use of the sports and athletic facilities is not made available to the general public on the same basis as it is made available to members.

Granting of membership includes both one-time initiation fees and periodic membership dues. Sports and athletic facilities include golf courses, tennis, racquetball, handball and squash courts, basketball and volleyball facilities, running tracks, exercise equipment, swimming pools, and other similar athletic or sports facilities. The provisions of this paragraph do not apply to camps or other recreation facilities owned and operated by an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1992, for educational and social activities for young people primarily age 18 and under.

Subd. 5.(a) A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business.

(b) Property utilized by the owner only by leasing such property to others or by holding it in an effort to so lease it, and which is put to no use by the owner other than resale after such lease or effort to lease, shall be considered property purchased for resale.

(c) Master computer software programs that are purchased and used to make copies for sale or lease are considered property purchased for resale.

(d) Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or the alteration, repair or improvement of real property are "retail sales" or "sales at retail" in whatever quantity sold and whether or not for purpose of resale in the form of real property or otherwise.

(e) A sale of carpeting, linoleum, or other similar floor covering which includes installation of the carpeting, linoleum, or other similar floor covering is a contract for the improvement of real property.

(f) A sale of shrubbery, plants, sod, trees, and similar items that includes installation of the shrubbery, plants, sod, trees, and similar items is a contract for the improvement of real property.

(g) Aircraft and parts for the repair thereof purchased by a nonprofit, incorporated flying club or association utilized solely by the corporation by leasing such aircraft to shareholders of the corporation shall be considered property purchased for resale. The leasing of the aircraft to the shareholders by the flying club or association shall be considered a sale. Leasing of aircraft utilized by a lessee for the purpose of leasing to others, whether or not the lessee also utilizes the aircraft for flight instruction where no separate charge is made for aircraft rental or for charter service, shall be considered a purchase for resale; provided, however, that a proportionate share of the lease payment reflecting use for flight instruction or charter service is subject to tax pursuant to section 129.15.

(h) Tangible personal property that is awarded as prizes shall not be considered property purchased for resale.

(i) Tangible personal property that is utilized or employed in the furnishing or providing of services under section 129.01, subdivision 4, paragraph (d), or in conducting lawful gambling under chapter 349 or the state lottery under chapter 349A, including property given as promotional items, shall not be considered property purchased for resale. Machines, equipment, or devices that are used to furnish, provide, or dispense goods or services, including coin operated devices, shall not be considered property purchased for resale.

Subd. 6. "Storage" includes any keeping or retention in the city for any purpose except sale in the regular course of business or subsequent use solely outside the city of tangible personal property.

Subd. 7. "Use" includes the exercise of any right or power over tangible personal property, or tickets or admissions to places of amusement or athletic events, purchased from a retailer incident to the ownership of any interest in that property except that it does not include the sale of that property in the regular course of business. "Use"

includes the consumption of printed materials which are consumed in the creation of nontaxable advertising that is distributed, either directly or indirectly, within the City of Rochester.

Subd. 8. "Storage" and "use" do not include the keeping or retaining in a public warehouse of tangible personal property or tickets or admissions to places of amusement or athletic events when shipped or brought into the City by common carrier, for the purpose of subsequently being transported outside the City and thereafter used solely outside the City, except in the course of interstate commerce.

Subd. 9. "Gross receipts" means the total amount received, in money or otherwise, for all sales at retail as measured by the sales price. Gross receipts from sales may, at the option

of the taxpayer, be reported on the cash basis as the consideration is received or on the accrual basis as sales are made.

Subd. 10. "Sales price" means the total consideration valued in money, for a retail sale whether paid in money or otherwise, excluding therefrom any amount allowed as credit for tangible personal property taken in trade for resale, without deduction for the cost of the property sold, cost of materials used, labor or service cost, interest, or discount allowed after the sale is consummated, the cost of transportation incurred prior to the time of sale, any amount for which credit is given to the purchaser by the seller, or any other expense whatsoever. A deduction may be made for charges of up to 15 percent in lieu of tips, if the consideration for such charges is separately stated. No deduction shall be allowed for charges for services that are part of a sale. A deduction may also be made for interest, financing, or carrying charges, charges for labor or services used in installing or applying the property sold or transportation charges if the transportation occurs after the retail sale of the property only if the consideration for such charges is separately stated. There shall not be included in "sales price" cash discounts allowed and taken on sales or the amount refunded either in cash or in credit for property returned by purchasers.

Subd. 11. "Tangible personal property" means corporeal personal property of any kind whatsoever, including property which is to become real property as a result of incorporation, attachment, or installation following its acquisition. Personal property does not include:

- (a) large ponderous machinery and equipment used in a business or production activity which at common law would be considered to be real property;

- (b) property which is subject to an ad valorem property tax;

- (c) property described in section Minn. Stat. Section 272.02, subdivision 1, clause (8), paragraphs (a) to (d);

- (d) property described in section Minn. Stat. Section 272.03, subdivision 2, clauses (3) and (5).

Tangible personal property includes computer software, whether contained on tape, discs, cards, or other devices. Tangible personal property also includes prepaid telephone calling cards. For purposes of this chapter, "prepaid telephone calling card" means any card or other similar arrangement, including prepaid authorization numbers, which permit its holder to obtain telephone services and pay for such services in advance.

Subd. 12. "Commissioner" means the commissioner of revenue of the state of Minnesota.

Subd. 13. "Agricultural production", as used in section 129.25, subdivision 1(h) of this ordinance includes, but is not limited to, horticulture; floriculture; raising of pets, fur bearing animals, research animals, farmed cervidae, as defined in Minn. Stat. Section 17.451, subdivision 2, llamas, as defined in Minn. Stat. Section 17.455, subdivision 2, ratitae, as defined in Minn. Stat. Section 17.453, subdivisions 3, and horses.

Subd. 14. "Retailer" includes every person engaged in making sales at retail as herein defined.

Subd. 15. "Handicapped" means a permanent and total disability as defined in Minnesota Statutes, Section 273.13, subd. 22.

< Text of subd. 16 effective for sales made after June 30, 2000. >

Subd. 16. "Farm machinery" means new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in the production for sale, but not including the processing, of livestock, dairy animals, dairy products, poultry and poultry products, fruits, vegetables, forage, grains and bees and apiary products. "Farm machinery" includes:

(1) machinery for the preparation, seeding or cultivation of soil for growing agricultural crops and sod, harvesting and threshing of agricultural products, harvesting or mowing of sod, and certain machinery for dairy, livestock and poultry farms;

(2) barn cleaners, milking systems, grain dryers, automatic feeding systems and similar installations, whether or not the equipment is installed by the seller and becomes part of the real property;

(3) irrigation equipment sold for exclusively agricultural use, including pumps, pipe fittings, valves, sprinklers and other equipment necessary to the operation of an irrigation system when sold as part of an irrigation system, whether or not the equipment is installed by the seller and becomes part of the real property;

(4) logging equipment, including chain saws used for commercial logging;

(5) fencing used for the containment of farmed cervidae, as defined in section 17.451,

subdivision 2;

(6) primary and backup generator units used to generate electricity for the purpose of operating farm machinery, as defined in this subdivision, or providing light or space heating necessary for the production of livestock, dairy animals, dairy products, or poultry and poultry products; and

(7) aquaculture production equipment as defined in subdivision 19.

Repair or replacement parts for farm machinery shall not be included in the definition of farm machinery. Tools, shop equipment, grain bins, feed bunks, fencing material except fencing material covered by clause (5), communication equipment and other farm supplies shall not be considered to be farm machinery. "Farm machinery" does not include motor vehicles taxed under chapter 129.44, snowmobiles, snow blowers, lawn mowers except those used in the production of sod for sale, garden-type tractors or garden tillers and the repair and replacement parts for those vehicles and machines.

Subd. 17. "Director" means the director of the department of finance of the city or the commissioner of revenue of the state of Minnesota, acting as the director's agent under the authority of an agreement entered into between the city and the state of Minnesota pursuant to Laws 1998, Chapter 389, Article 8, Section 43, and section 129.42 of this ordinance.

Subd. 18. "Custom computer program" means a computer program prepared to the special order of the customer, either in the form of written procedures or in the form of storage media on which, or in which, the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program transferred. It includes those services represented by separately stated charges for modifications to an existing prewritten program that are prepared to the special order of the customer. It does not include a "canned" or prewritten computer program that is held or existing for general or repeated sale or lease, even if the prewritten or "canned" program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification. For purposes of this subdivision:

(1) "Storage media" includes punched cards, tapes, discs, diskettes, or drums on which computer programs may be embodied or stored;

(2) "Computer" does not include tape-controlled automatic drilling, milling, or other

manufacturing machinery or equipment; and,

(3) "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data processing equipment instructions necessary to solve a problem and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

Subd. 19. "Aquaculture production equipment" means new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in aquaculture production. Aquaculture production equipment includes: augers and blowers, automatic feed systems, manual feeding equipment, shockers, gill nets, trap nets, seines, box traps, round nets and traps, net pens, dip nets, net washers, floating net supports, floating access walkways, net supports and walkways, growing tanks, holding tanks, troughs, raceways, transport tanks, egg taking equipment, egg hatcheries, egg incubators, egg baskets and troughs, egg graders, egg counting equipment, fish counting equipment, fish graders, fish pumps and loaders, fish elevators, air blowers, air compressors, oxygen generators, oxygen regulators, diffusers and injectors, air supply equipment, oxygenation columns, water coolers and heaters, heat exchangers, water filter systems, water purification systems, waste collection equipment, feed mills, portable scales, feed grinders, feed mixers, feed carts and trucks, power feed wagons, fertilizer spreaders, fertilizer tanks, forage collection equipment, land levelers, loaders, post hole diggers, disc, harrow plow, and water diversion devices. Repair or replacement parts for aquaculture production equipment shall not be included in the definition of aquaculture production equipment.

Subd. 20. CAPITAL EQUIPMENT. (a) Capital equipment means machinery and equipment purchased or leased for use in this state and used by the purchaser or lessee primarily for manufacturing, fabricating, mining, or refining tangible personal property to be sold ultimately at retail and for electronically transmitting results retrieved by a customer of an on line computerized data retrieval system.

(b) Capital equipment includes all machinery and equipment that is essential to the integrated production process. Capital equipment includes, but is not limited to:

(1) machinery and equipment used or required to operate, control, or regulate the production equipment;

(2) machinery and equipment used for research and development, design, quality control, and testing activities;

(3) environmental control devices that are used to maintain conditions such as temperature, humidity, light, or air pressure when those conditions are essential to and are part of the production process;

(4) materials and supplies necessary to construct and install machinery or equipment;

(5) repair and replacement parts, including accessories, whether purchased as spare parts, repair parts, or as upgrades or modifications to machinery or equipment;

(6) materials used for foundations that support machinery or equipment;

(7) materials used to construct and install special purpose buildings used in the production process; or

(8) ready-mixed concrete trucks in which the ready-mixed concrete is mixed as part of the delivery process.

(c) Capital equipment does not include the following:

(1) motor vehicles taxed under chapter 129.24;

(2) machinery or equipment used to receive or store raw materials;

(3) building materials;

(4) machinery or equipment used for nonproduction purposes, including, but not limited to, the following: machinery and equipment used for plant security, fire prevention, first aid, and hospital stations; machinery and equipment used in support operations or

for administrative purposes; machinery and equipment used solely for pollution control, prevention, or abatement; and machinery and equipment used in plant cleaning, disposal of scrap and waste, plant communications, space heating, lighting, or safety;

(5) "farm machinery" as defined by subdivision 15, and "aquaculture production equipment" as defined by subdivision 19; or

(6) any other item that is not essential to the integrated process of manufacturing, fabricating, mining, or refining.

(d) For purposes of this subdivision:

(1) "Equipment" means independent devices or tools separate from

machinery but essential to an integrated production process, including computers and software, used in operating, controlling, or regulating machinery and equipment; and any subunit or assembly comprising a component of any machinery or accessory or attachment parts of machinery, such as tools, dies, jigs, patterns, and molds.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Machinery" means mechanical, electronic, or electrical devices, including computers and software, that are purchased or constructed to be used for the activities set forth in paragraph (a), beginning with the removal of raw materials from inventory through the completion of the product, including packaging of the product.

(4) "Manufacturing" means an operation or series of operations where raw materials are changed in form, composition, or condition by machinery and equipment and which results in the production of a new article of tangible personal property. For purposes of this subdivision, "manufacturing" includes the generation of electricity or steam to be sold at retail.

(5) "Mining" means the extraction of minerals, ores, stone, and peat.

(6) "On line data retrieval system" means a system whose cumulation of information is equally available and accessible to all its customers.

(7) "Pollution control equipment" means machinery and equipment used to eliminate, prevent, or reduce pollution resulting from an activity described in paragraph (a).

(8) "Primarily" means machinery and equipment used 50 percent or more of the time in an activity described in paragraph (a).

(9) "Refining" means the process of converting a natural resource to a product, including the treatment of water to be sold at retail.

(e) For purposes of this subdivision the requirement that the machinery or equipment "must be used by the purchaser or lessee" means that the person who purchases or leases the machinery or equipment must be the one who uses it for the qualifying purpose. When a contractor buys and installs machinery or equipment as part of an improvement to real property, only the contractor is

considered the purchaser.

Subd. 21. Special tooling. Special tooling means tools, dies, jigs, patterns, gauges and other special tools which have value and use only for the buyer and for the use for which it is made. An item has use or value only to the buyer if the item is not standard enough to be stocked or ordered from a catalog or other sales literature, but must be produced in accordance with special requirements peculiar to the buyer and not common to someone else whose conditions for possible use of the material are reasonably similar to the buyer's.

Subd. 22. Subdivision Repealed Ordinance #3148 - January 22, 1998.

Subd. 23. Subdivision Repealed Ordinance #3148 - January 22, 1998.

Subd. 24. "Leasing" includes all transfers of possession of tangible personal property or the use thereof by the lessee for a consideration when title remains with the lessor at the end of the lease. If a contract designated as a lease binds the lessee for a fixed term and the lessee is to obtain title at the end of the term of the agreement or

has the option at that time to purchase the property for a nominal amount, the contract is regarded as a sale and not as a lease. For purposes of this chapter, a lease of tangible personal property is a series of transactions that impose upon the lessee multiple payment obligations. A taxable transaction is considered to have occurred when an obligation to make a lease payment becomes due under the terms of the agreement or trade practices of the lessor. For purposes of this subdivision, "nominal amount" means an amount so small, slight, or negligible that it is not economically significant and bears no relation to the real value of the item being purchased.

129.02. Imposition of Tax. Except as otherwise provided in this chapter, there is hereby imposed a sales tax of one-half of one percent of the gross receipts from sales at retail, as hereinbefore defined, made by any person in the City. The date of delivery to the purchaser shall be used to determine the appropriate tax rate. Any tax authorized by Chapter 129 of this code may not be imposed on political subdivisions of the State of Minnesota. The provisions of Minn. Stat. Section 297A.48, Local sales tax rules, as the same may be amended from time to time, shall apply to the collection of taxes under this chapter.

129.03. Separate statement; collection from purchaser; advertising no tax; minimum; uniform tax collection methods

Subdivision 1. The tax shall be stated and charged separately from the sales price or charge for service insofar as practicable and shall be collected by the seller from the

purchaser and shall be a debt from the purchaser to the seller recoverable at law in the same manner as other debts.

Subd. 2. In computing the tax to be collected as the result of any transaction amounts of tax less than one half of one cent may be disregarded and amounts of tax of one half cent or more may be considered an additional cent. If the sales price of any sale at retail is eight cents or less, no tax shall be collected.

Subd. 3. Agreements between competitive retailers or the adoption of appropriate rules or regulations by organizations or associations of retailers to provide uniform methods for adding such tax or the average equivalent thereof, and which do not involve price fixing agreements otherwise unlawful, are expressly authorized and shall be held not in violation of any laws of Minnesota prohibiting such agreements. The commissioner may prescribe rules for such agreements.

129.04. Applications; Member; Form. Every person desiring to engage in the business of making retail sales within the city shall file with the director an application for a permit. The director may require any person or class of persons obligated to file a use tax return under Section 129.27, subdivision 2 of this Code, division 2 of this ordinance, to file an application for a permit. Every application for a permit shall be made upon a form prescribed by the director and shall set forth the name under which the applicant intends to transact business, the location of his place or places of business, and such other information as the director may require. The application shall be filed by the owner, if a natural person; by a member or partner, if the owner is an association or partnership; by a person authorized to file the application, if the owner is a corporation.

129.05. Operator of Flea Markets; Seller's Permits Required. The operator of a flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling event, as a prerequisite to renting or leasing space on the premises owned or controlled by the operator to a person desiring to engage in or conduct business as a seller, shall obtain evidence that the seller is the holder of a valid seller's permit issued under Section 129.04, or a written statement from the seller that the seller is not offering for sale any item that is taxable under this chapter. Flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, or similar selling event, as used in this section, means an activity involving a series of sales sufficient in number, scope, and character to constitute a regular course of business, and that would not qualify as an isolated or occasional sale under Section 129.25, subdivision 1, clause (k).

129.06. Permit. After compliance with sections 129.04 and 129.28 of this chapter, when

security is required, the director shall grant to each applicant a permit. A permit is

valid until cancelled or revoked but is not assignable and is valid only for the person in whose name it is granted and for the transaction of business at the places designated.

129.065. Cancellation of Permits. The director may cancel a permit when one of the following conditions occurs:

- (1) the permit holder has not filed a sales or use tax return for one year or more;
- (2) the permit holder has not reported any sales or use tax liability on the permit holder's returns for two or more years; or,
- (3) the permit holder requests cancellation of the permit.

129.07. Revocation of Permits. Sales tax permits issued under the authority of this chapter may be revoked pursuant to the provisions of Minn. Stat. Section 297A.07.

129.08. Sales Without Permits, Violations. A person who engages in the business of making retail sales in the city without the required permit or permits, and each officer of any corporation which so engages in business, shall be guilty of a misdemeanor.

129.09. Presumption of Tax; Burden of Proof. For the purpose of the proper administration of this code and to prevent evasion of the tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale is not a sale at retail is upon the person who makes the sale, but that person may take from the purchaser an exemption certificate to the effect that the property purchased is for resale or that the sale is otherwise exempt from the application of the tax imposed by this code.

129.10. Exemption Certificate, Duty of Retailer. The exemption certificate will conclusively relieve the retailer from collecting and remitting the tax only if taken in good faith from a purchaser who holds the permit provided for in section 129.06 of this code.

129.11. Content and Form of Exemption Certificate. The exemption certificate shall be signed by and bear the name and address of the purchaser, shall indicate the sales tax account number if any issued to the purchaser and shall indicate the general character of the property sold by the purchaser in the regular course of business and shall identify the property purchased. The certificate shall be substantially in such form as the director may prescribe. A person who has obtained from the commissioner an exemption certificate pursuant to Minnesota Statutes, Section 297A.11, may use such exemption certificate in lieu

of that required by this chapter.

129.12. Improper Use of Subject of Purchase Obtained with Exemption Certificate. If a purchaser who gives an exemption certificate makes any use of the subject of the purchase other than for a purpose exempted under this code, such use shall be deemed a retail sale by the purchaser as of the time of first use by the purchaser, and the sales price to the purchaser shall be deemed the gross receipts from such retail sale. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the purchaser's gross receipts the amount of the rental charged. Upon subsequent sale of such property, the seller shall include the entire amount of gross receipts received therefrom without deduction of amounts previously received as rentals.

129.13. Use of Exemption Certificate to Evade Tax; Penalty. Any person who gives an exemption certificate for property which will be used for purposes other than the exemption claimed with the intent to evade payment to the seller of the amount of the tax applicable to the transaction shall be subject to a penalty payable to the director of \$100 for each transaction where an improper use of an exemption certificate has occurred.

129.14. Commingling Exemption Certificate Goods. If a purchaser gives an exemption certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

129.15. Using, Storing or Consuming Tangible Personal Property; Admissions; Utilities.

Subd. 1. For the privilege of using, storing, distributing, or consuming in the city tangible personal property, or taxable services purchased for use, storage, or distribution, or consumption in this city, there is imposed on every person in this city a use tax at the rate imposed by section 129.02 of the code on the sales price of sales at retail of any of the aforementioned items made to such person unless the tax imposed by section 129.02 of this Code was paid on said sales price.

A use tax is imposed on every person who uses, stores, distributes, or consumes tangible personal property in the city which has been manufactured, fabricated, or assembled by the person from materials, either within or without this city, at the rate of tax imposed under section 129.02 of the code on the sales price of sales at retail of the materials contained in the tangible personal property, unless the tax imposed by section 129.02 was paid on the sales price.

Subd. 2. A motor vehicle subject to tax under this section shall be taxed at its fair market value at the time of transport into the city if the motor vehicle was acquired more than three months prior to its transport into this city.

Subd. 3. Purchases subject to use tax under this section are exempt if (1) the purchase is made by an individual for personal use, and (2) the total purchases that are subject to the use tax do not exceed \$770 in the calendar year. For purposes of this subdivision, "personal use" includes purchases for gifts. If an individual makes purchases, which are subject to use tax, of more than \$770 in the calendar year the individual must pay the use tax on the entire amount. This exemption does not apply to purchases made from retailers who are required or registered to collect taxes under this chapter.

129.16. Collection and Payment; Penalty. Subdivision 1. Liability for the payment of the use tax is not extinguished until the tax has been paid to the City of Rochester or to the State of Minnesota on the City's behalf. However, a receipt from a retailer given to the purchaser pursuant to section 297A.16 relieves the purchaser of further liability for the tax to which the receipt refers, unless the purchaser knows or has reason to know that the retailer did not have a permit to collect the tax.

Subd. 2. Refund; appropriation. The seizure and refund provisions of Minn. Stat. section 297A.15 shall apply to those tax amounts imposed and collected pursuant to section 129.02 of this chapter.

Subd. 3. A retailer making retail sales from outside this state to a destination within the City of Rochester shall meet the registration requirements of Minn. Stat. Ch. 297A.

129.17. Collection of Tax at Time of Sale. Any retailer who is required under section 129.21 of this Code, or authorized by the director to collect the use tax upon making retail sales of any items enumerated in sections 129.01 to 129.42 and not exempted under sections 129.01 to 129.42 to which the use tax applies, shall at the time of making such sales collect the use tax from the purchaser and give to the purchaser a receipt therefore in the form of a notation on the sales slip or receipt for the sale price or in such other form as prescribed by the director. Any such retailer shall not collect the tax from a purchaser who furnishes to such retailer a copy of a certificate issued by the director authorizing such purchaser to pay any sales or use tax due on purchases made by such purchaser directly to the director. The tax collected by such retailer pursuant to the provisions of this section shall be remitted to the director as provided in other sections of this chapter.

129.18. Status as Debt. The use tax required to be collected by the retailer shall be a debt from the purchaser to the retailer recoverable at law in the same manner as other debts.

129.19. Minimum Tax. In computing the tax to be collected as the result of any transaction amounts of tax less than one-half of one cent may be disregarded and amounts of tax of one-half cent or more may be considered an additional cent.

129.20. Repealed August 18, 1992, per Ordinance Number 2835

129.21. Registration to Collect Use Tax. Subdivision 1. "Retailer maintaining a place of business in this city", or any like term, shall mean any retailer having or maintaining within this city, directly or by a subsidiary, an office, place of distribution, sales or sample room or place, warehouse, or other place of business, or

having any representative, agent, salesperson, canvasser, or solicitor operating within this city under the authority of the retailer or its subsidiary, for any purpose, including the repairing, selling, delivering, installing, or soliciting or orders for the retailer's goods or services, or the leasing of tangible personal property located in the city, whether the place of business or agent, representative, salesperson, canvasser, or solicitor is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this city.

Subd. 2. Destination. The destination of a sale is the location to which the retailer makes delivery of the property sold, or causes the property to be delivered, to the purchaser of the property, or to the agent or designee of the purchaser by any means of delivery, including the United States Postal Service, a common carrier, or a contract carrier.

Subd. 3. Registration. A retailer making retail sales from outside this state to a destination within this city and state shall comply with the registration provisions of Minn. Stat. Section 297A.21.

129.22. Presumption of Purpose of Sale, Burden of Proof. For the purpose of the proper administration of sections 129.01 to 129.48 and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that all retail sales for delivery in Rochester, Minnesota are for storage, use or other consumption in Rochester, Minnesota until the contrary is established. The retailer who makes the sale may take from the purchaser an exemption certificate in accordance with sections 129.09 to 129.13 of this code.

129.23. Property Brought to the City; Presumption; Burden of Proof. Any purchaser of tangible personal property or any items enumerated in section 129.15 which are shipped or brought to Rochester, Minnesota by the purchaser shall have the burden of proving that the same were not purchased from a retailer for storage, use or consumption in Rochester, Minnesota.

129.24. Taxes in Other States. If any article of tangible personal property or any item

enumerated in section 129.15 of this Code has already been subjected to a tax by any other state in respect of its sale, storage, use or other consumption in an amount less than the sum of the tax imposed by this ordinance and that imposed by Minnesota Statutes, Chapter 297A and acts amendatory thereto, then as to the person who paid the tax in such other state, the provisions of section 129.15 shall apply at a rate measured by the difference between the sum of the rates imposed under this ordinance and under Minnesota Statutes, Chapter 297A and acts amendatory thereto, and the rate by which the previous tax was computed. If such tax imposed in such other state was equal to or greater than the tax imposed by the city and by the state of Minnesota, then no tax shall be due from such person under section 129.15 of this chapter.

129.25. Repealed effective January 1, 2000.

129.251. Repealed effective January 1, 2000.

129.252. Repealed effective January 1, 2000.

129.253. Repealed effective January 1, 2000.

129.254. Repealed effective January 1, 2000.

129.255. Repealed effective January 1, 2000.

129.256. Repealed effective January 1, 2000.

129.257. Repealed effective January 1, 2000.

129.26. Repealed effective January 1, 2000.

129.27. Repealed effective January 1, 2000.

129.28. Repealed effective January 1, 2000.

129.29. Repealed effective January 1, 2000.

129.30. Repealed effective January 1, 2000.

129.31. Repealed effective January 1, 2000.

129.32. Repealed effective January 1, 2000.

129.33. Repealed effective January 1, 2000.

129.34. Repealed effective January 1, 2000.

129.35. Repealed effective January 1, 2000.

129.36. Repealed effective January 1, 2000.

129.37. Repealed effective January 1, 2000.

129.38. Repealed effective January 1, 2000.

129.39. Repealed by Ordinance No. 2664 on December 4, 1989.

129.40. Deposit of Revenues; Cost of Administration; Termination of Taxes. Subdivision 1. All of the revenues, including permit fees, interest and penalties, derived from the sales and use and excise taxes imposed by this chapter on or after January 1, 1999, shall be deposited by the director in the city treasury and shall be credited to the fund established to pay the costs imposed in collecting the taxes imposed herein, and to finance the costs of acquisition and betterment of the following project:

A. Transportation infrastructure improvements including regional highway and airport improvements;

B. Improvements to Mayo Civic Center complex;

C. A municipal water, sewer and storm sewer project to improve regional ground water quality; and

D. Construction of a regional recreation and sports center and other higher education facilities available for both community and student use.

At special elections held on June 24, 1998, and October 4, 2005, city voters approve these projects, the issuance of general obligation bonds and the payment of debt service on the bonds.

Subd. 2. The costs of all refunds made under this chapter shall be paid from the fund set forth in subdivision 1 of this section.

Subd. 3. The taxes imposed by this chapter shall terminate on the first day of the month next succeeding a determination by the city council that sufficient funds have been received from the taxes to finance capital and administrative costs of \$111,500,000 for the public improvements described in subdivision 2 and to prepay or retire at maturity the principal, interest and premium due on any bonds issued for the public improvements. Any funds remaining after completion of the improvements and retirement or redemption of the bonds may be placed in the general fund of the city.

(3742, 11/21/05)

129.41. Repealed effective January 1, 2000.

129.42. Administration: Agreement with Commissioner. The director is hereby authorized, in the name of the city, to enter into an appropriate agreement or agreements with the commissioner, to facilitate the issuance of permits, filing and audit of returns, collection of revenues and issuance of refunds of the taxes and any other administrative matters relating to the administration of sections 129.01 to 129.42 of this chapter, and the taxes imposed therein.

129.43. Definitions. Subdivision 1. For the purpose of sections 129.43 to 129.47 of this chapter, the following terms shall have the meaning ascribed to them.

Subd. 2. "Motor vehicle" means any of the following as otherwise defined by Minnesota Statutes, Section 168.011: (i) a "passenger vehicle"; (ii) a "bus" or "intercity bus"; (iii) a "truck"; (iv) a "truck-tractor"; (v) a "station wagon"; (vi) a "van"; (vii) a "pickup truck"; (viii) "recreational equipment" which is self-propelled.

Subd. 3. "Dealer" means a person as defined by Minnesota Statutes, Section 168.011, subd. 21, and licensed by the commissioner of public safety pursuant to Minnesota Statutes, Chapter 168, and engaged in the city in the business of selling motor vehicles at retail.

Subd. 4. "Sale, sells, selling, purchase or acquired" means the acts described in Minnesota Statutes, Section 297B.01, subd. 7.

Subd. 5. "City" means the City of Rochester.

Subd. 6. "Director" means the director of the department of finance of the city.

129.44. Excise Tax Imposed: Certain Motor Vehicle Sales by Dealers. There is hereby imposed pursuant to the authority of Laws 1998, Chapter 389, Article 8, Section 43, an excise tax of \$20 on each sale of a motor vehicle sold by a dealer in the city.

129.45. Collection of Tax: Dealer's Responsibility. A dealer who sells a motor vehicle shall collect from the purchaser, at the time of the sale, the tax imposed by sections 129.43 to 129.47 of this chapter. The collection of the tax imposed herein shall be a personal obligation of the dealer and the proceeds of such tax collected shall be thereafter paid over to the city under such circumstances as may be established from time to time by the director.

129.46. Authority of Director; Investigatory Powers; Enforcement. Subdivision 1. The director is authorized to establish rules and procedures to implement the collection of the excise tax imposed by sections 129.43 to 129.47 of this chapter.

Subd. 2. For the purpose of determining the correctness of any return or of determining whether any person should have made a return or paid taxes or for the purpose of collection of any such taxes hereunder, the director shall have power to examine, or cause to be examined, any books, papers, records, or memoranda, which may be relevant to making such determinations, whether such books, papers, records, or memoranda, are the property of or in the possession of such person or any other person. He shall have power to require the attendance of any person having knowledge or information which may be relevant, to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination, and to administer oaths or affirmations.

Subd. 3. Any unpaid obligation of a dealer to the city under sections 129.43 to 129.47 of this chapter may be collected by a judicial proceeding brought in the name of the city in the district court of Olmsted county.

129.47. Penalties. It is a misdemeanor for a dealer to violate sections 129.43 and 129.45 of this chapter.

129.48. Severability of Provisions. If any section, subdivision, clause or other part of this chapter be adjudged void or of no effect for any reason whatsoever, such decision shall not affect the validity of any other portion of this chapter.

(2320, 8/15/83; 2386, 6/30/84; 2396, 7/17/84; 2462, 7/30/85; 2556, 6/1/87; 2576, 12/21/87; 2595, 6/8/88; 2664, 12/4/89; 2685, 03/30/90; 2700, 08\09\90; 2771; 10/7/91; 2835, 8/18/92; 2839, 8/9/92; 2952 8/16/94; 3058, 11/22/96; 3148, 1/22/98; 3217, 12/22/98; 3297 12/6/99; 3742, 11/21/05)

